

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL SURETY COMPANY, a Corpora-
tion,

Plaintiff in Error,

VS.

COUNTY OF LINCOLN,

Defendant in Error.


Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Montana.

Filed

AUG - 5 1916

F. D. Monckton,
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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[1*] Names and Addresses of Attorneys of
Record.

HON. J. B. POINDEXTER, Attorney General,
Helena, Montana;

HON. W. H. POORMAN, Assistant Attorney Gen-
eral, Helena, Montana;

MESSRS. LOGAN & CHILD, Kalispell, Montana,
and

HON. JAMES M. BLACKFORD, Libby, Montana,
Attorneys for Plaintiff and Defendant in
Error.

HON. CLARENCE H. GILBERT, of Portland,
Oregon, and

MESSRS. GUNN, RASCH & HALL, of Helena,
Montana,

Attorneys for Defendant and Plaintiff in
Error.

[2] *In the District Court of the United States in
and for the District of Montana.*

No. 395.

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Cor-
poration,

Defendants.

*Page-number appearing at foot of page of original certified Record.

BE IT REMEMBERED, that on the 17th day of June, 1914, a Transcript on Removal of the above-entitled cause from the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln, was duly filed herein, said Transcript on Removal being in the words and figures following, to wit:

[3] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Complaint.

The plaintiff in the above-entitled action complains of the defendants therein and for cause alleges:

1. That at all the times hereinafter mentioned the above-named plaintiff was, ever since has been and now is one of the duly created, organized and existing counties of the State of Montana, and as such has charge and control of the highways and bridges laid out, constructed and operated by the authority of the State of Montana within the boundaries of said county.

2. That at all the times hereinafter mentioned the above-named defendant, Coast Bridge Company,

was, ever since has been and now is a corporation organized and existing under and by virtue of the laws of the State of Oregon.

3. That at all the times hereinafter mentioned the above-named defendant, National Surety Company, was, ever since has been and now is a corporation organized and existing under and by virtue of the laws of the State of New York.

4. That on or about the 18th day of December, A. D. 1911, the above-named plaintiff and the defendant, Coast Bridge Company, entered into a contract in writing, by the terms of which the defendant, Coast Bridge Company, for and in consideration of the payment of certain sums of money, understood and agreed to construct across the Kootenai River at Rexford in said County of Lincoln, State of Montana, a steel bridge, and thereafter during the month [4] of February, 1912, the said plaintiff and defendant, Coast Bridge Company, made certain modifications of the specifications attached to and made a part of such contract, a copy of which contract, together with the changed and modified specifications thereunto annexed and made a part of the same is hereto annexed marked Exhibit "A" and made a part of this complaint.

5. That by the terms of such changed and altered specifications so as aforesaid made a part of said contract, said defendant, Coast Bridge Company, agreed that all piles to be used in the construction of said bridge should be driven with a hammer weighing not less than two thousand pounds and that the penetration under the last blow of such hammer fall-

ing twenty feet should not exceed one half inch and that if necessary such piles should be shod with steel or cast iron shoes and properly ringed at the top with wrought iron ring to prevent their splitting or brooming.

6. That on the 18th day of December, 1911, in consideration of the said contract above mentioned the said defendant, Coast Bridge Company, and the said defendant, National Surety Company, made, executed and delivered to the said County of Lincoln their obligation in writing in the penal sum of Thirty Thousand Dollars (\$30,000.00) lawful money of the United States conditioned to the effect that if the said Coast Bridge Company should faithfully and truly observe and comply with all the terms, conditions and provisions in said contract and the changed and altered plans and specifications mentioned and should well and truly and fully do and perform all matters and things by them undertaken to be performed under said contract then and in such event such obligation should be null and void but that otherwise it was to be and remain in full force and effect, a copy of which obligation is hereto annexed marked Exhibit "B" and made a part hereof.

7. That during the course of construction of said bridge, as hereinafter set forth, this plaintiff, at various times and in various sums, paid to the said defendant, Coast Bridge Company, the [5] aggregate sum of Thirty Thousand Dollars (\$30,000.00) for and in consideration of the construction of the said bridge according to the terms and conditions of said contract and specifications thereto annexed; that

said payment was made without knowledge on the part of said plaintiff County or any of its officers or agents of the wrongs or injuries hereinafter mentioned and without any knowledge on the part of the plaintiff, its officers or agents that said bridge was not being constructed in accordance with the said contract and the plans and specifications mentioned and that the failure on the part of said defendant, Coast Bridge Company, to construct the said bridge in accordance with such contract and specifications, as hereinafter set forth, was a fact wholly and exclusively within the knowledge of the said defendant, Coast Bridge Company, and that the plaintiff, its officers and agents, had no knowledge or means of knowledge of such failure on the part of said defendant Coast Bridge Company and that the payments herein mentioned and each of them were all made under the belief of the plaintiff, its officers and agents, that said bridge was being constructed and was constructed strictly in accordance with the terms and conditions of said contract and specifications and that this plaintiff, its officers and agents, had no knowledge or means of knowledge to the contrary until long after each and every payment had been made and until after said bridge was destroyed as hereinafter set forth, and that this plaintiff could not by the exercise of reasonable or any diligence have discovered or known of the defective construction of said bridge as hereinafter set forth until after each and all of said payments had been made and until after said bridge was destroyed as hereinafter set forth, and that the said defendant, Coast Bridge

Company, at the time of receiving the payments hereinbefore mentioned and each and all of them wrongfully, willfully and with the intent to deceive, injure and defraud the plaintiff pretended that such bridge was constructed in accordance with said contract and specifications and this [6] plaintiff wholly relying upon such false and fraudulent representations and not otherwise, and believing that said bridge was being constructed and was constructed in compliance with the terms and conditions of said contract and specifications, made such payments and the whole thereof and did not until long afterwards discover that the defendant, Coast Bridge Company, had wholly failed and neglected to comply with the terms and conditions of said contract and specifications as hereinafter set forth.

That said contract and specifications hereinbefore mentioned provided for the driving of a set of piling for the middle pier of said bridge with a hammer weighing not less than two thousand pounds, falling twenty feet so that the penetration at the last blow would not exceed one half inch; but that the said defendant Coast Bridge Company, failed and neglected to drive said piling with a hammer weighing not less than two thousand pounds falling twenty feet so that the penetration at the last blow did not exceed one-half inch but on the contrary thereof said defendant, Coast Bridge Company so drove such piling that at the last blow thereof each and every one of such piling would have been driven at least six inches with a hammer weighing two thousand pounds and falling twenty feet and by reason of the failure and neglect of the said defendant, Coast

Bridge Company to drive said piling in accordance with the terms of such specifications, the foundation of such middle pier became and was at all times insecure and unsafe and by reason of the bottoms of such piling resting on insecure and shifting gravel and sand occasioned by the defendant, Coast Bridge Company, failing to drive such piling in accordance with the specifications hereinbefore mentioned the foundation of said middle pier was placed in great danger of being undermined and destroyed, and thereafter and during the spring of 1913, by reason of the failure and neglect of the said defendant, Coast Bridge Company, as aforesaid, said center pier was washed away, toppled over and destroyed and the entire bridge structure resting thereon entirely collapsed and was rendered useless [7], and of no value to the damage of the County of Lincoln in the sum of Thirty Thousand Dollars (\$30,000.00).

8. That no part of said sum mentioned in the preceding paragraph has been paid.

WHEREFORE, plaintiff prays that it recover of and from the said defendants and each of them the sum of Thirty Thousand Dollars (\$30,000.00), its damages so as aforesaid sustained, and for its costs of suit.

D. M. KELLY,

Atty. Gen.,

JAMES M. BLACKFORD,

County Attorney,

C. S. WAGNER,

Asst. Atty. Gen., and

SIDNEY M. LOGAN,

Attorneys for Plaintiff.

[8] Exhibit "A" to Complaint—Contract.**CONTRACT.**

This agreement, made the fifth day of February, one thousand nine hundred and twelve, between the Coast Bridge Company, a corporation, hereinafter known as the Bridge Company, party of the first part, and the County of Lincoln, Montana, hereinafter known as the County, party of the second part, WITNESSETH:

That, Whereas the said parties executed a contract on December 18, 1911, for the construction of a steel bridge at Rexford, Montana, by the Bridge Company for the County, and

Whereas, authorized by a provision of said contract, the County has decided to alter the dimensions of said Bridge and increase its length, which necessitates alterations in the construction of said Bridge, the said parties do now covenant, promise and agree one with the other as follows, to wit:

The Bridge Company promises and agrees to alter and extend the bridge aforesaid, and to make all alterations, extensions and enlargements, and to erect and to construct the said bridge in accordance with plans, drawings and specifications to be hereinafter submitted by the Bridge Company to the County, and which said plans, drawings and specifications shall become, upon acceptance by the County, a part of said contract of December 18, 1911, and shall be annexed thereto and marked "Plans for Rexford Bridge," and shall be submitted for the plans,

drawings and specifications heretofore made a part of the contract of date December 18, 1911.

It is covenanted and agreed by the Bridge Company and the County that this contract shall become operative and effective upon the submission of the plans, drawings and specifications herein first mentioned to the County and the approval and acceptance of the same by the County and not before.

The County, for and in consideration of the strict performance by the Bridge Company of all the aforesaid covenants [9] by it to be performed, hereby promises and agrees to pay the Bridge Company the sum of Three thousand four hundred and eighty-seven Dollars, in addition the price agreed upon for the said Bridge in the said contract of date December 18, 1911, payment of said money to be made within thirty days after the acceptance of said Bridge by the County.

In Witness Whereof the said County of Lincoln, State of Montana, has caused these presents to be signed in its name and behalf by the Board of County Commissioners of said County, and attested by the County Clerk, and the said Coast Bridge Company has caused these presents to be signed in its name and behalf by the President and its Secretary the day

and year herein first above written.

LINCOLN COUNTY, Montana.

PAUL D. PRATT, Chairman,

(County Seal) Board of County Commissioners.

J. P. BARTLETT, Commissioner.

F. P. GAREY, Commissioner.

COAST BRIDGE COMPANY,

By JOHN P. WHITLOCK, President.

GEO. A. SEARS, Secretary.

Attested by: SAMUEL CARPENTER,
County Clerk.

[10] SPECIFICATIONS.

For a Steel Highway Bridge and Approaches
Over the Kootenai River

Near Rexford

Lincoln County, Montana.

Specifications referred to in Supplemental Contract of date Feb. 5, 1912, for a Bridge at Rexford, Montana, being an alteration of plans specified in contract of December 18, 1911, for Bridge at Rexford, Montana, between Lincoln County, Montana, and Coast Bridge Co.

PAUL D. PRATT,
Chairman Co. Comms.

Approved Feb. 5, 1912.

PAUL D. PRATT,
Chairman.

[11] SPECIFICATIONS

GENERAL DESCRIPTION.

The work covered by these specifications and accompanying plans contemplate the manufacture and erection of a steel highway bridge on steel tubular

piers and concrete piers over the Kootenai river near Rexford, Lincoln County, Montana.

ACCOMPANYING PLANS.

The accompanying plans show one general design for the crossing of the Kootenai river at Rexford, Montana, and will be known as plan "A."

PLAN "A."

SHEET 1.

Sheet 1 shows the profile of the Kootenai river near Rexford, Montana, at the proposed site of the bridge.

The proposed crossing shown on this sheet suggests 2-220' Pin conn. spans for a superstructure, resting on one stream pier and two shore piers, together with the necessary wooden approaches.

On this sheet is also shown the detail dimensions for the concrete piers, and tubular piers; also a cross section of the pile approach.

SHEET 2.

Sheet 2 shows the strain sheet and the sizes and make ups of all of the members of the steel work of a 220' pin conn. type of span suggested for the two spans of this crossing.

[12] There is also shown a cross section of the Span at the center, and an end view of the span showing the sizes and arrangements of the wind or lateral bracing.

This cross section also shows the clearances and the arrangement and sizes of the floor system and rail.

DRAWINGS.

These specifications and the accompanying draw-

ings are intended to describe and provide for the completed work. They are to be co-operative, and what is called for by either is as binding as if called for by both.

The work therewith described is to be completed in every detail, notwithstanding that every item involved is not particularly mentioned.

The contract price as set forth in the proposal is based on the intent of these specifications, and the accompanying plans, and a copy of same will be attached and be considered part of the specifications and accompanying plans.

FLOOR SYSTEM.

The floor stringers underneath the roadway on the approaches and spans shall consist of ten lines of 3"x14" joists except where the panel length exceeds 20', when the joists shall be increased in size to 4"x16". These joists shall be of such length that they shall overlap the floor beam and caps at least 6". They shall preferably be surfaced one edge to even width, and if not they shall be dapped over the floor beams 1/2" to give an even *boaring*. The outside joists shall make butt joint so as to be in perfect alignment for the bolting of the hand rail posts. There shall be a line of 2x6 bridging at center of each panel both on spans and approaches. The floor shall consist of 3"x12" plank, 18" long, laid tight and neatly trimmed to even length. They shall preferably be surfaced one side to even thickness and laid with the smooth side down. Each plank shall be spiked with one 7" wire spike at each intersection of

the intermediate joist [13] and by two 7" spikes to the outside joists.

RAIL AND CARDS.

On each side of the roadway of the span and approaches there shall be a 4x6 wheel guard fastened through and into the outside line of joists by a 5/8"x12" lag screw, having a malleable washer under head. These lag screws shall be spaced about 6' apart.

There shall be a wooden hand rail on both sides of the roadway extending from end to end of bridge and approaches, and consisting of two lines of 2x6, and one line of 3x10, sufficiently spiked to 4x6 posts, which in turn are to be bolted by 2 1/2" bolts with malleable washers underhead, and nut, to the outside joists. There shall be three posts to each panel of floor system, or they shall be spaced about 6' center to center. Along the center of the roadway there shall be a 6x8 guard timber dividing the roadway into two parts. This guard shall be bolted through the floor to timber washers underneath, with 1 1/2" bolts. This line of guard timber shall extend from end to end of the steel work and as far on the approaches as may be necessary, to keep the travel on the right side of the bridge in crossing. All guard rail, hand rail posts and hand rail shall be surfaced four sides. Hand rail posts shall be cut of such length that the height of the hand rail above the finished floor shall be at least 3' 6". After completion of the hand rail, posts and stringers of the same shall receive two good coats of paint, of a color which may be selected later.

APPROACHES.

The wooden approaches to the spans shall rest on pile bents. These bents shall consist of four piles spaced transversely, 5' 6" center to center. They shall be capped with a 10x12", 20' cap, drift bolted to each pile with a $\frac{3}{4}$ x28" round drift bolt. Each bent shall be swayed with two $\frac{3}{8}$ " sways bolted to the cap and to each pile with a $\frac{5}{8}$ " machine bolt. All bolts shall have the proper malleable washers underhead, and nut.

[14] All approaches to span shall be of such length as the local engineer may designate, but no approach shall have a grade greater than five per cent. On the approaches on the hill side of the Libby and Troy bridges there shall be wider approaches, so as to make an easy turn from the approaches to the new road grade. These approaches shall have the piles and caps and joists called for on the accompanying plans.

**SPECIFICATIONS FOR MATERIAL.
CEMENT.**

All cement used shall be one of the standard brands of Portland cement, and must be of such quality as to pass the test adopted as standard by the American Society of Civil Engineers.

SAND.

The sand shall be coarse, clean and sharp and must be free from loam, earth or other foreign matter of any kind, in excess of five per cent by volume.

GRAVEL.

The gravel used in the concrete for the abutments,

piers and for filling the tubes, shall be thoroughly cleaned from dust, earth or other objectionable matter, and shall vary in size from $\frac{3}{8}$ " to 2" in greatest diameter.

CONCRETE.

Concrete shall be of the following proportions: To each barrel or four bags of cement shall be 12 cubic feet of sand and 22 cubic feet of gravel of the quality given above. Concrete shall preferably be machine mixed, but if mixed by hand the following method shall be employed. It shall be mixed on a close board platform. The material for each batch must be carefully measured to insure the correct proportions. The sand and cement shall be evenly spread and then thoroughly mixed by turning over with hoes or shovels before wetting; they should be then wetted and worked to a soft mortar; then the proper amount previously drenched with water, should be spread over the mortar and well incorporated with same by turning the whole over at least three times with *shovel* [15] *hoes*. It should be of the consistency known as wet concrete, and require but little ramming in the forms when laid in layers not thicker than nine inches.

LUMBER.

All lumber used shall be native lumber, sound, reasonably well seasoned, free from loose or rotten knots, wind shakes, splits or other defects that would impair its strength or durability. All lumber for the hand rail and guards shall be surfaced four sides.

PAINT.

All paint used in this work in shop or field shall be

one of the standard brands of graphite, mixed with pure linseed oil.

PILES.

Piles are to be cut from live trees, and not to be less than 12" at the large end and not less than 9" at the small end. They shall be stripped from all bark; be straight and sound and free from wind shakes. If found necessary in driving, all piles shall be shod with steel or cast iron shoes to prevent their splitting or crushing under rapid blows of the hammer.

HARDWARE.

All hardware shall be first class in every respect and of standard sizes and make, and shall be used as called for on the plans in these specifications.

STEEL WORK.

All steel work shall be as per the standard specifications, and shall conform to the requirements of the standard specifications of the American Bridge Company of New York.

COAST BRIDGE COMPANY.

SPECIFICATIONS FOR MATERIAL AND DETAILS FOR THE MANUFACTURE OF STEEL HIGHWAY BRIDGES.

SPECIFICATIONS FOR MATERIAL.

STEEL.

All steel used in the construction of these bridges shall conform to the manufacturer's standard specifications for medium [16] and rivet steel, as published in the 1903 Hand Book of the Carnegie Steel Company.

PROPORTIONS OF PARTS.

All parts of the structure shall be proportioned by the following unit strains:

Lateral bracing per square inch.....18,000 lbs.

Bottom *fange* of riveted girders, net section.....14,000 “

Solid rolled beams, used as floor beams or stringers.....16,000 lbs.

Floor beam hangers..... 8,000 “

Counters and long verticals, forged bars..12,000 “

Counters and long verticals, plates and shapes.....11,000 “

Bottom chords and main diagonals, eye bars.....15,000 “

Bottom chords and main diagonals, plates and shapes.....14,000 “

Shear on web plates of girders..... 8,000 “

Shear on pins and rivets.....10,000 “

Bending on pins.....25,000 “

Bearing projected and semi-intrades.....16,000 “

For rivets in floor system, deduct 20% from the above unit strains.

For rivets in lateral system, add 20% to above unit strains.

For rivets hand-driven or bolts used in field erection, add 25% to the number obtained as above.

In members subject to tension strains, full allowance shall be made for reduction of section by rivet holes.

Compression members shall be proportioned by the following allowed unit strains:

Square Ends.	Pin and Square Ends.	Pin Ends.
12,500	12,500	12,500
<hr/>	<hr/>	<hr/>
2	2	2
(L)	(L)	(L)
1-	1-	1-
<hr/>	<hr/>	<hr/>
2	2	2
36,000R	24,000R	18,000R

where L equals the length of the member in inches and where R equals the least radius of gyration of the member.

[17] STEEL ROLLERS.

Shall be proportioned by the formula $600-d$ for allowed unit strains per lineal inch of rollers, where d is the diameter of the rollers in inches.

LATERAL STRUTS.

Lateral struts shall be proportioned by the above formula to resist the resultant due to an assumed initial strain of 10,000 lbs. per square inch upon all the rods attaching to them assumed to be produced by adjusting the bridge, or to greatest strain from wind in one direction.

LENGTH.

No compression member shall have a length exceeding sixty times its least width, nor 120 times its least radius of gyration for main members nor 150 times its least radius of gyration for bracing.

FLANGES.

In riveted beams and plate girders the compression flange shall be made of the same gross section as the tension flanges.

Rolled beams shall have generally a depth of not

less than $1/15$ of the span.

ALTERNATE STRAINS.

Members subject to alternate strains of tension and compression shall be proportioned to resist each kind of strain. Both of the strains, however, to be considered as increased by an amount equal to $8/10$ of the least radius of the two strains for determining the sectional areas by the above allowed unit strains.

DETAIL OF CONSTRUCTION.

DETAILS.

All the connections and details of the several parts of the structure shall be of such strength, that upon testing, pressure will occur in the body of the members rather than in any of their details or connections.

Preference shall be had for such details as shall be most accessible for inspection, cleaning and painting; no closed sections will be allowed.

[18] The pitch of rivets in all classes of work shall never exceed 6 inches, or sixteen times the thinnest outside plate, nor be less than three diameters of the rivet.

The rivets used shall generally be $5/8$, $3/4$, and $7/8$ inch diameter.

The distance between the edge of any piece and the center of a rivet hole must never be less than one inch, except for bars less than 2 inches wide; when practicable, it shall be at least two diameters of the rivet.

For punching, the diameter of the die shall in no case exceed the diameter of the punch by more than

1/16 of an inch, and all holes must be clean cut without torn or ragged edges.

All rivet holes must be accurately spaced and punched so that when the several parts forming one member are assembled together, a rivet 1/16 of an inch less diameter than the hole can generally be entered hot, into any hole, without reaming or straining the metal by "drifts"; occasional variations must be corrected by reaming.

The rivets when driven must completely fill the holes. The rivet-heads must be round and of uniform size for the same sized rivets thruout the work. They must be full and neatly made, and be concentric to the rivet hole and thoroughly pinch the connected pieces together.

Wherever possible, all rivets must be machine driven. The machine must be capable of straining the applied pressure after the upsetting is completed.

Field riveting must be reduced to a minimum or entirely avoided where possible.

The effective diameter of a driven rivet will be assumed the same as its diameter before driving. In deducting the rivet holes to obtain net sections in tension members, the diameter of the rivet holes will be assumed as $\frac{1}{8}$ inch larger than the undriven rivets.

For main members and their connections, no material shall be [19] used of a less thickness than $\frac{1}{4}$ of an inch; and for laterals and their connections, no material less than $\frac{3}{16}$ of an inch in thickness; except for lining or filling vacant spaces.

The heads of eye bars shall be so proportioned and

made that the bars will preferably break in the body of the original bar rather than at any part of the head or the neck. All bars 3" in width or more shall be die forged.

The bars must be free from flaws and of full thickness in the necks. They shall be perfectly straight before boring. The holes shall be in the center of the head, and on the center line of the bar.

The bars must be bored to length not varying from the calculated lengths more than $1/64$ of an inch for each 25 feet of total length.

The lower chord shall be packed as narrow as possible.

The pins shall be turned straight and smooth; chord pins shall fit the pinholes within $1/32$ of an inch.

All bars with screw ends shall be upset at the ends, so that the diameter at the bottom of the threads shall be $1/16$ inch larger than any part of the body of the bar. Where closed sleeve nuts are used on adjustable members, the effective length of the thread shall be legibly stamped at the screw ends of each bar.

All threads must be United States standard, except at the ends of the pins.

The pitch of rivets at the ends of compression members shall not exceed four diameters of the rivets for a length equal to twice the width of the member.

The open sides of all compression members shall be stayed by batten plates at the ends and diagonal lattice work at intermediate points.

All bed plates must be of such dimensions that the greatest pressure upon the pedestal stone shall not exceed 250 lbs. per square inch.

All bridges over 100 feet span, shall have turned friction [20] rollers running between planed surfaces. These rollers shall not be less than $2\frac{7}{8}$ inches diameter for spans 100 feet, and for greater spans, this diameter shall be increased in proportion of one inch for 100 feet additional. Bridges 100 feet and less in length, one end shall be free to move on smooth surfaces. Allowance should be made for an expansion and contraction corresponding to a variation of 150° Fahrenheit, in temperature.

SHOP PAINTING.

All iron work before leaving the shop shall be thoroughly cleaned from all loose scale and rust, and be given one good coating of graphite paint, well worked into all joints and open spaces.

In riveting work, the surfaces coming in contact shall each be painted before being riveted together.

Pieces which are not accessible for painting after erection shall have two good coats of paint.

The paint shall be of good quality of graphite mixed with pure linseed oil, or such as may be specified in the contract.

Pins, pin holes, screw threads and other finished surfaces shall be coated with white lead and tallow before being shipped from shop.

PAINTING.

After the erection of the steel work and before any lumber has been placed on the bridge, all steel work

shall be given one complete coat of same kind of paint as was used in the shop.

FINAL.

All work either described or shown herein shall be executed of good material and in good workmanlike manner and same shall be acceptable to the Board of County Commissioners of Lincoln County, Montana, or their duly authorized representatives.

[21] EXCAVATION.

FOR PIERS AND ABUTMENTS.

The Piers and Abutments shall be sunk to the elevation called for on the plans. These shall be made within a timber cofferdam, or by any other means which the contractor may see fit to use in order to reach the desired depth and to conform to the dimensions shown on the plans of these foundations.

After excavation is made to the full depth, piles shall be driven inside, if so ordered by the Engineer. They shall be cut off at an elevation of about 24" above the bottom of the concrete piers and abutments, and about 6" above the bottom of the steel work if tubular piers are used. These foundations shall then be pumped out and filled with concrete, as specified under concrete.

If steel tubes are used, the upper foot of the top of the tubes shall be made of concrete in the proportion of one, two and four.

All bed plates resting upon the concrete work shall be set on small metal wedges, leveled to the proper elevation and thoroughly grouted with cement mortar in the proportion of one of cement to two of sand, in order that they may have an even bearing throughout.

FORMS.

The concrete of the piers and abutments shall be cast within suitable molds. These molds shall be built of lumber, sized to an even thickness and width and finished on the interior in a workmanlike manner, in order to give good finish to the completed concrete. These molds or forms shall be of such size and dimensions that the concrete piers and abutments shall conform to the sizes and dimensions shown on the accompanying plans.

All forms shall be built of good sound lumber and shall be properly braced and tied together by wire ties, in order that there may be no spreading when the concrete is poured. These forms shall not be removed until at least five days after the concrete has been pressed.

[22] ERECTION.**PILE DRIVING.**

All piles shall be as called for under specifications and shall be of the length called for on the plans or of a length necessary to fulfill the following specification as to driving;

Piles shall be driven with a hammer weighing not less than 2000 lbs. The penetration under the last blow of the hammer falling twenty feet shall not exceed one half inch. If necessary they shall be shod with steel or cast iron shoes and properly ringed at the top with a wrought iron ring, to prevent their splitting or brooming. All piles which are broken, split or badly broomed and in the opinion of the engineer are not satisfactory, must be withdrawn and replaced by other piles to the satisfaction of the

engineer or inspector in charge.

STEEL SPANS.

The contractor shall furnish all staging and false work, shall erect and adjust all metal work, place all posts, chords, struts, stringers, floor planks, guards and rail complete as shown on plans and specifications. He shall anchor the spans with proper anchor bolts; fox-bolted to the concrete and set with Portland cement.

Such false work shall be used as in the opinion of the engineer shall permit of no unnecessary risk of accident to the men and material. After the span has been swung and before the floor has been placed, all work shall be thoroughly and evenly painted with one additional coat of paint; as was used in the shop. All recesses which will retain water or through which water can enter, must be filled with thick paint or some water-proof cement.

FIELD RIVETS.

All riveted field connections must be made in the best possible manner. The heads shall be similar to those shown in shop driven rivets. The rivets must be heated uniformly the entire length and when driven they must completely fill the holes. While a workmanlike finish is desired, it must be remembered that the [23] item of prime importance is that the rivet shall be well set up the entire length of the hole. Rivets with cracked heads or heads not concentric with the axis of holes will not be admitted. All rivet heads and marred surfaces must be touched up with paint before any rust has had time to form or field coat of paint is applied.

**Exhibit "B" to Complaint—Bond, December 20,
1911, Bridge Co. et al., to County of Lincoln.**

[24] BOND FOR REXFORD BRIDGE.

KNOW ALL MEN BY THESE PRESENTS: That we, the Coast Bridge Company, a corporation organized and existing under and by virtue of the laws of the State of Oregon, as Principal, and the National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and duly licensed to transact a Surety business in the State of Montana, as Surety, are held and firmly bound unto the County of Lincoln, Montana, constituting its Board of County Commissioners, in the penal sum of Thirty thousand (\$30,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, That, WHEREAS, on the 18th day of December, 1911, the said Coast Bridge Company, the Principal herein, made and entered into a certain contract with the County of Lincoln, Montana, by the terms, conditions and provisions of which the said COAST BRIDGE COMPANY, the Principal herein, is to and shall furnish all labor and material and do certain work, to wit: for the erection complete of a two span riveted bridge over the Kootenai river at Rexford, Montana, together with three concrete piers; also the lumber and railings for said

spans and all other material, all strictly in accordance with the maps, plans and specifications therefor, and according to the terms of the contract aforesaid, all of which are made a part hereof.

WHEREAS, the Board of County Commissioners of Lincoln County, Montana, have since the 18th day of December, 1911, changed and altered the original plans and specifications of the details for the erection of said bridge at Rexford, Montana, and the Coast Bridge Company, the Principal herein, has made and entered into a new contract with the County of Lincoln, Montana, in accordance with the changed plans and specifications and by the terms, conditions and [25] provisions of which the said Coast Bridge Company, the Principal herein, is to and shall furnish all labor and material and do certain work, to wit: For the erection complete of a two span riveted bridge over the Kootenai river at Rexford, Montana, together with three concrete piers; also the lumber and railings for said spans and all other material, all strictly in accordance with the amended and changed maps, plans and specifications therefor, and according to the terms of the contract aforesaid, all of which are made a part hereof.

WHEREAS, the Board of County Commissioners have by an order duly made, ordered that the Coast Bridge Company file a new bond and undertaking in the sum of THIRTY THOUSAND DOLLARS (\$30,000.00), conditioned for the faithful performance by the said Coast Bridge Company, of all the conditions of that certain contract entered into by and between the Coast Bridge Company and Lincoln

County, Montana, in accordance with the amended plans and specifications, and that the bond heretofore furnished by the Coast Bridge Company shall be null and void and of no force or effect after the filing of the within obligation.

NOW, THEREFORE, if the said COAST BRIDGE COMPANY, the Principal herein, shall faithfully and truly observe and comply with all the terms, conditions and provisions in said contract, and the changed and altered plans and specifications mentioned, and shall well and truly and fully do and perform all matters and things by them undertaken to be performed under said contract, and shall pay all laborers, mechanics or sub-contractors with material, supplies or provisions for the carrying on of such work, all just debts, dues and demands incurred in the performance of such work, then this obligation shall be null and void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said Principal has caused these presents to be signed by its duly authorized officers, and the said Surety has caused these presents to be signed by its duly [26] authorized Resident Vice-President and Resident Assistant Secretary, and its corporate seal to be hereto

attached this 20th day of December, 1911.

COAST BRIDGE COMPANY.

By JOHN P. WHITLOCK,
Its President.

(Coast Bridge Co. Seal)

GEO. A. SEARS,
Secty.

NATIONAL SURETY COMPANY.

By HARRISON ALLEN,
Resident Vice-President.

(National Surety Co. Seal)

Attest: JAS. Mc. WOOD,
Resident Assistant Secretary.

Approved Sept. 9th, 1912.

PAUL D. PRATT,
Chairman.

Recorded at the request of County Commissioners,
Sept. 9th, 1912.

SAMUEL CARPENTER,
County Recorder.

[Endorsed]: Title of Court and Cause. Com-
plaint. Filed April 25, 1914. Timothy Miller,
Clerk of Court.

[27] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Summons.

The State of Montana Sends Greetings to the Above-named Defendants and to Each of Them:

You are hereby summoned to answer the complaint in this action, which is filed in the office of the clerk of this court, a copy of which is herewith served upon one of you in each county wherein any of you reside, and to file your answer and serve a copy thereof upon the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you, by default, for the relief demanded in the complaint.

Witness my hand and the seal of said court this 25th day of April, 1914.

[Seal]

TIMOTHY MILLER,

Clerk.

State of Montana,
County of Lewis and Clark,—ss.

OFFICE OF THE SHERIFF.

I hereby certify that I have received the within summons on the 30th day of April, 1914, and personally served the same on the 1st day of May, 1914, upon National Surety Company, a corporation, one of the within named defendants, by delivering to William K. Armstrong, State Manager of said National Surety Company, [28] a corporation, personally, in the County of Lewis and Clark, a copy of said Summons, and a copy of the complaint referred to in said Summons.

Dated Helena, Montana, June 6, 1914.
ROLLA DUNCAN,
Sheriff.
By C. E. Deflette,
Deputy Sheriff.

Service	\$1.00
Mileage20
<hr/>	
Total	\$1.20
Filed June 12, 1914. Timothy Miller, Clerk.	

[29] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Separate Demurrer of Defendant National Surety Company.

Now comes the National Surety Company, one of the defendants in said above-entitled cause, and appearing separately for and on its own behalf, demurs to the plaintiff's complaint on file herein upon the following grounds:

I.

That said plaintiff's complaint does not state facts sufficient to constitute a cause of action against this defendant.

GUNN, RASCH & HALL,
Attorneys for Defendant National Surety Company.

Due personal service of within demurrer made and admitted and receipt of copy acknowledged this 18th day of May, 1914.

D. M. KELLY,
Atty. Genl.,

By C. S. WAGNER,
Asst.,

Of Attorneys for Plaintiff.

Filed May 21, 1914. Timothy Miller, Clerk.

[30] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

**Notice of Intention to File Petition for Removal and
Bond on Removal.**

To the County of Lincoln, the Plaintiff in said Above-entitled Cause, and to Messrs. D. M. Kelly, Attorney General of the State of Montana, C. S. Wagner, Assistant Attorney General of the State of Montana, James Blackford, County Attorney of the County of Lincoln, and Sidney M. Logan, said Plaintiff's Attorneys:

You and each of you will please take notice that the National Surety Company, one of the defendants in said above-entitled action, intends to file and will file its petition in said above-entitled court for removal of said cause to the District Court of the United States for the District of Montana, on the 21st day of May, 1914.

And you are further notified that the said National Surety Company intends to file and will file a good and sufficient bond in connection with and at the time of filing such petition for removal, a copy

of which said petition for removal and of said bond are herewith separately served upon you.

Dated this 18th day of May, 1914.

GUNN, RASCH & HALL,
Attorneys for Defendant National Surety Company.

[31] Due personal service of within notice made and admitted and receipt of copy acknowledged this 18th day of May, 1914, and service and receipt of copy of said petition for removal and of copy of said bond on removal is also hereby acknowledged and admitted.

D. M. KELLY,

Atty. Genl.

By C. S. WAGNER,

Asst.,

Of Attorneys for Plaintiff.

Filed May 21, 1914. Timothy Miller, Clerk.

[32] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Bond on Removal.

KNOW ALL MEN BY THESE PRESENTS:
That the National Surety Company, a corporation,

organized and existing under and by virtue of the laws of the State of New York, one of the defendants in said above-entitled cause, as principal, and the United States Fidelity & Guaranty Company, a corporation, organized and existing under and by virtue of the laws of the State of Maryland, and duly authorized to do a surety business in the State of Montana, as surety, are held and firmly bound unto the County of Lincoln, the above-named plaintiff, in the penal sum of Three Hundred Dollars (\$300), for the payment of which well and truly to be made to said County of Lincoln, plaintiff in said above-entitled cause, we bind ourselves, our representatives, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 18th day of May, 1914.

The condition of the above obligation is such that, whereas the National Surety Company, one of the defendants in said above-entitled cause, is about to petition the District Court of the Eleventh Judicial District of the State of Montana, in and for [33] the County of Lincoln, for the removal of said above-entitled action, wherein the said County of Lincoln is plaintiff and the Coast Bridge Company, a corporation, and said National Surety Company, are defendants, to the District Court of the United States for the District of Montana;

NOW, if the said National Surety Company shall enter in the District Court of the United States for the District of Montana, within thirty days from the day of the filing of this petition for removal a certified copy of the record in this action, and shall well and truly pay all costs that may be awarded by

the said District Court of the United States in and for the District of Montana, if said United States District Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force, virtue and effect.

In Witness Whereof, the National Surety Company has caused these presents to be executed as the principal thereof by its agent thereunto duly authorized, and its corporate seal to be affixed hereto, and said United States Fidelity & Guaranty Company has caused these presents to be executed as surety by its agent thereunto duly authorized and its corporate seal to be affixed hereto on this 18th day of May, A. D. 1914.

NATIONAL SURETY COMPANY.

By W. K. ARMSTRONG,

Its Attorney in Fact.

[National Surety Co. Seal]

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY.

By CLINTON O. PRICE,

Its Attorney in Fact.

[United States Fidelity & Guaranty Co. Seal]

[34] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Petition for Removal.

To the Honorable The District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln:

The petition of the National Surety Company, one of the defendants in said above-entitled cause, respectfully shows and represents to this Honorable Court:

1. That your petitioner is one of the defendants in said above-entitled cause, and that the said action has been commenced against your petitioner and its said codefendant; Coast Bridge Company, by the said plaintiff, the County of Lincoln, in said above-entitled court, and the said action is now pending therein for the recovery in favor of said plaintiff and against said defendants of the sum of \$30,000 damages and the costs of the action, upon a bond executed by your petitioner's codefendant, Coast Bridge Company, as principal, and by your petitioner as surety, which said bond is in the sum of \$30,000 and was given to said plaintiff, the County

of Lincoln, for the faithful performance on the part of your petitioner's said codefendant, Coast Bridge Company, of a certain contract made and entered into by and between said plaintiff and said defendant, Coast Bridge Company, for the [35] construction and erection by said defendant, Coast Bridge Company, of a bridge over the Kootenai River at Rexford, Montana, and it being alleged in said plaintiff's complaint that the said defendant, Coast Bridge Company, failed to erect and construct said bridge in accordance with, and as required by, said contract, by reason of which such alleged failure on the part of the said defendant, Coast Bridge Company, to perform said contract in accordance with its terms and provisions, the said bridge was destroyed to plaintiff's damage in the sum of \$30,000, all of which is more fully shown and set forth in plaintiff's complaint on file herein, to which reference is hereby made.

2. That your petitioner disputes the claim made by said plaintiff and denies any and all liability to said plaintiff on account of the destruction of said bridge.

3. That the said action is and involves a controversy wholly between citizens of different states. That the said action was begun against your petitioner and its said codefendant, Coast Bridge Company, in said above-entitled court on the 25th day of April, 1914. That when said action was commenced, the said plaintiff was, ever since has been, and it is now a county of the State of Montana, created, organized and existing as a body corporate

and politic under and by virtue of the laws of the State of Montana, and during all of said times was a citizen of the State of Montana, and was not at any of said times a citizen of any other State of the United States of America. That this petitioning defendant, National Surety Company, at the time of the commencement of this action was, ever since has been, and it is now a corporation duly organized and existing under and by virtue of the laws of the State of New York, and at all of said times was and now is a citizen of said State of New York. That your petitioner's said [36] codefendant, Coast Bridge Company, at the time of the commencement of this action was, ever since has been, and it is now a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, and at all of said times was and is now a citizen of said State of Oregon, and that both of said defendant corporations, your petitioner and its said codefendant, Coast Bridge Company, at all of said times were and they are now citizens of states of the United States other than the State of Montana.

4. That the said action is of a civil nature and the matter and amount in dispute therein between the said plaintiff on the one side and the said defendants on the other, exceeds, exclusive of interest and costs, the sum of \$3,000, and it is a cause removable to the United States District Court for the District of Montana, by virtue of the provisions of the statutes of said United States, upon the ground of the diversity of citizenship of the said plaintiff on the one side and the said defendants on the other side.

5. That your petitioner was served with summons in said action in the City of Helena, Lewis & Clark County, Montana, on the 1st day of May, 1914, and the time within which your petitioner is required to appear in said action has not yet expired. That no service of process or summons has been made or had upon your petitioner's said codefendant, Coast Bridge Company, and the said defendant, Coast Bridge Company, has in no wise appeared in said action, nor has it caused any appearance on its behalf to be made in said cause, and this court has not acquired jurisdiction of the said defendant, Coast Bridge Company.

6. That your petitioner herewith presents a good and sufficient bond as provided and required by the statute in such case made and provided, that it will enter in the District Court of the United States in and for the District of Montana [37] within thirty days from the date of the filing of this petition for removal, a certified copy of the record of this action, and for the payment of all costs that may be awarded by the said District Court of the United States for the District of Montana, if said District Court of the United States shall hold that the said above-entitled cause was wrongfully or improperly removed thereto.

Wherefore, your petitioner prays that this action be removed to the District Court of the United States in and for the District of Montana, and that this Honorable Court accept this petition and the said bond and proceed no further in said cause, except to make an order for the removal of said cause to the

said District Court of the United States for the District of Montana.

NATIONAL SURETY COMPANY.

By GUNN, RASCH & HALL,

Its Attorneys thereunto duly authorized.

GUNN, RASCH & HALL,

Attorneys for Petitioner.

State of Montana,

County of Lewis & Clark,—ss.

Carl Rasch, being first duly sworn, deposes and says: That he is one of the attorneys for the National Surety Company, one of the defendants in said above-entitled cause and the petitioner named in the foregoing petition for the removal of said cause to the Federal Court; that affiant has read the foregoing petition and knows the contents thereof and that the matters and things therein stated and set forth are true to the best of affiant's knowledge, information and belief; that the reason why this verification is made by [38] affiant as one of the attorneys for said petitioner, is because none of the officers of said petitioner reside in the County of Lewis and Clark, the county in which affiant resides.

CARL RASCH.

Subscribed and sworn to before me this 18th day of May, 1914.

[Seal]

W. W. PATTERSON,

Notary Public for the State of Montana, Residing at
Helena, Montana.

My commission expires May 6, 1917.

Due personal service of within petition for removal made and admitted and receipt of copy acknowledged this 18th day of May, 1914.

D. M. KELLY,

Atty. Gen.,

By C. S. WAGNER,

Asst.,

Of Attorneys for Plaintiff.

Filed May 21, 1914. Timothy Miller, Clerk.

[39] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Bond on Removal.

KNOW ALL MEN BY THESE PRESENTS: That the National Surety Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, one of the defendants in said above-entitled cause, as principal, and the United States Fidelity & Guaranty Company, a corporation, organized and existing under and by virtue of the laws of the State of Maryland, and duly authorized to do a surety business in the State of Montana, as surety, are held and firmly bound

unto the County of Lincoln, the above-named plaintiff, in the penal sum of Three Hundred Dollars (\$300), for the payment of which well and truly to be made to said County of Lincoln, plaintiff in said above-entitled cause, we bind ourselves, our representatives, successors and assigns, jointly and severally, firmly by these presents.

Signed and sealed this 18th day of May, 1914.

The condition of the above obligation is such that, whereas the National Surety Company, one of the defendants in said above-entitled cause, is about to petition the District Court of the Eleventh Judicial District of the State of Montana, in and for [40] the County of Lincoln, for the removal of said above-entitled action, wherein the said County of Lincoln is plaintiff and the Coast Bridge Company, a corporation, and said National Surety Company, are defendants, to the District Court of the United States for the District of Montana;

NOW, if the said National Surety Company shall enter in the District Court of the United States for the District of Montana, within thirty days from the day of the filing of this petition for removal a certified copy of the record in this action, and shall well and truly pay all costs that may be awarded by the said District Court of the United States in and for the District of Montana, if said United States District Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force, virtue and effect.

In Witness Whereof, the National Surety Com-

pany has caused these presents to be executed as the principal thereof by its agent thereunto duly authorized, and its corporate seal to be affixed hereto, and said United States Fidelity & Guaranty Company has caused these presents to be executed as surety by its agent thereunto duly authorized and its corporate seal to be affixed hereto on this 18th day of May, A. D. 1914.

NATIONAL SURETY COMPANY.

By W. K. ARMSTRONG,

Its Attorney in Fact.

[National Surety Co. Seal]

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY,

By CLINTON O. PRICE,

Its Attorney in Fact.

[United States Fidelity & Guaranty Co. Seal]

Due personal service of within bond on removal made and admitted and receipt of copy acknowledged this 18th day of May, 1914.

D. M. KELLY,

Atty. Gen.,

By C. S. WAGNER,

Asst.,

Of Attorneys for Plaintiff.

Filed May 21, 1914. Timothy Miller, Clerk.

[41] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Order of Removal.

On this —— day of May, 1914, the above-entitled cause coming on to be heard on the petition of the defendant, National Surety Company, for the removal of said cause to the United States District Court for the District of Montana, and it appearing that a good and sufficient bond has been filed with said application, conditioned as by the Acts of Congress provided; and it further appearing that notice of intention to file said petition for removal and bond on removal was served on the above-named plaintiff by the said defendant, Coast Bridge Company, prior to the filing of said petition and bond, and it further appearing that said action is one which said defendant, Coast Bridge Company, has a right to have removed to the District Court of the United States for the District of Montana, by virtue of the provisions of the statutes of the United States, on the ground of diversity of citizenship of the plaintiff on the one side and the defendants on the other;

Now, therefore, it is ordered that the said bond be and the same is hereby approved and that the said action be and the same is hereby removed to the United States District Court [42] for the District of Montana; and the clerk of this court is hereby authorized and directed to furnish and provide the said National Surety Company, one of the defendants herein, with a duly certified copy of the record in this cause, upon the payment of the regular and customary fee therefor; and this court will proceed no further in said action, unless the said cause shall be remanded to this court from the said United States District Court for the District of Montana.

Dated this 22d day of May, 1914.

J. E. ERICKSON,
Judge.

Filed May 21, 1914. Timothy Miller, Clerk.

[43] *In the District Court of the Eleventh Judicial District of the State of Montana, in and for the County of Lincoln.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Certificate of Clerk to Transcript on Removal.

State of Montana,
County of Lincoln,—ss.

I, Timothy Miller, clerk of the said above-entitled

court, hereby certify the above and foregoing to be a full, true and correct copy of the record, and the whole thereof, in the above-entitled action, heretofore pending in said court, being cause No. 229, wherein the county of Lincoln is plaintiff, and Coast Bridge Company, a corporation, and National Surety Company, a corporation, are defendants, the said record consisting of the complaint filed by said plaintiff in said action on the 25th day of April, 1914, the summons and return thereon filed in said cause on the 12th day of June, 1914, notice of intention to file petition for removal and bond on removal; petition for removal of said action to the United States District Court for the District of Montana, filed by said defendant National Surety Company on the 21st day of May, 1914, and bond on removal of said action filed by said defendant National Surety Company with said petition for removal; separate demurrer of said defendant National Surety Company [44] filed on the 21st day of May, 1914, and the order of removal of said action to the United States District Court for the District of Montana; all as the same appear on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 13th day of June, 1914.

[Seal]

TIMOTHY MILLER,
Clerk.

[Endorsed]: Title of Court and Cause. Transcript on Removal. Filed June 17, 1914. Geo. W. Sproule, Clerk.

[45] UNITED STATES OF AMERICA.

*District Court of the United States, District of
Montana.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Action removed to the said District Court, and the
Complaint filed in the Office of the Clerk of said
District Court, in the City of Helena, County of
Lewis and Clark.

Summons.

The President of the United States of America,
Greeting: To the Above-named Defendant, Coast
Bridge Company, a Corporation, and National
Surety Company, a Corporation;

You are hereby summoned to answer the complaint
in this action which is filed in the office of the clerk
of this court, a copy of which is herewith served upon
you, and to file your answer and serve a copy thereof
upon the plaintiff's attorney within twenty days
after the service of this summons, exclusive of the
day of service; and in case your failure to appear or
answer, judgment will be taken against you by de-
fault, for the relief demanded in the complaint.

WITNESS, the Honorable GEO. M. BOURQUIN,
Judge of the United States District Court, District

of Montana, this 15th day of August, in the year of our Lord one thousand nine hundred and fourteen and of our Independence the 139th.

[Seal]

GEO. W. SPROULE,
Clerk.

By _____,
Deputy Clerk.

United States Marshal's Office,
District of Montana.

I hereby certify that I received the within summons on the 20th day of August, 1914, and personally served the same on the 20th day of August, 1914, on Coast Bridge Company, by delivery to, and leaving with John P. Whitlock, as president of said defendant Coast Bridge Co., named therein personally, at Portland, County of Multnomah, in said District, a certified copy thereof, together with a copy of the Complaint, certified to by James M. Blackford, attached thereto.

Dated this 20th day of August, 1914.

JOHN MONTAG,
U. S. Marshal.

By Tinnies Deboest,
Deputy.

Service of writ.....\$4.00

Mileage to serve 1 @ 12¢..... .12

\$4.12

[46] [Endorsed]: No. 395. U. S. District Court District of Montana. County of Lincoln, vs. Coast Bridge Company, a Corp., and National Surety Company, a Corporation. Summons. James M. Black-

ford, County Atty. D. M. Kelly, Atty. Genl., C. S. Wagner, Asst. Atty. Genl. and Logan & Child, Plaintiff's Attorneys. Filed Aug. 26th, 1914. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

[47] *In the District Court of the United States in
and for the District of Montana.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

Motion to Quash Service of Summons.

Now comes the Coast Bridge Company, one of the defendants in the above-entitled cause, and appearing specially for the purpose of this motion only, and for no other purpose whatsoever, and without submitting itself to the jurisdiction of this court, and moves the Court to vacate, set aside and quash the service of summons attempted to be made upon said defendant Coast Bridge Company, upon the ground and for the reasons following, to wit:

1. That the said Coast Bridge Company, at the time of the commencement of this action and at all times prior thereto, are, and ever since have been and now is, and at the time of the attempted service upon it of summons in said action was, a corporation organized and existing under and by virtue of the

laws of the State of Oregon, as is alleged in plaintiff's complaint on file herein, and at all of said times was and is now a citizen and resident of the said State of Oregon, but not a citizen or resident of any State of the United States other than the said State of Oregon.

[48] 2. That the said service of summons was made and attempted to be made, as appears from the return of such service or attempted service, endorsed upon said summons, by the United States Marshal for the District of Oregon, at the City of Portland, in the State and District of Oregon, a place without the District of Montana, wherein said action is pending, and a place beyond and without the jurisdiction of this court.

3. That the said service of summons as made and attempted to be made upon said defendant Coast Bridge Company in said District of Oregon is wholly unauthorized and ineffectual for any purpose.

This motion is based upon the records and papers on file in said court.

Dated this 4th day of September, 1914.

GUNN, RASCH & HALL,
Attorneys for Defendant Coast Bridge Company.

Due personal service of within Motion made and admitted and receipt of copy acknowledged this 4th day of September, 1914.

D. M. KELLY,
Attorney for Plaintiff,
Per J. H. ALVORD.

Filed Sept. 4, 1914. Geo. W. Sproule, Clerk.

[49] *In the District Court of the United States,
in and for the District of Montana.*

No. 395.

COUNTY OF LINCOLN,

vs.

COAST BRIDGE CO. and NATIONAL SURETY
CO.

Order Granting Withdrawal of Demurrer, etc.

By consent of respective counsel in open court, motion to quash herein confessed, and the demurrer of defendant National Surety Company withdrawn and said defendant granted 30 days to answer, Sidney M. Logan, Esq., appearing for plaintiff, and Carl Rasch, Esq., appearing for defendants.

Entered in open court Jan. 2, 1915.

GEO. W. SPROULE,
Clerk.

Attest a true copy:

[Seal]

GEO. W. SPROULE,
Clerk.

By C. R. Garlow,
Deputy.

[50] *In the District Court of the United States,
in and for the District of Montana.*

COUNTY OF LINCOLN,

Plaintiff,

vs.

COAST BRIDGE COMPANY, a Corporation, and
NATIONAL SURETY COMPANY, a Corporation,

Defendants.

**Separate Answer of Defendant National Surety
Company.**

Now comes the National Surety Company, one of the defendants in said above-entitled cause, and answering separately for and in its own behalf the plaintiff's complaint on file herein:

I.

Admits the allegations of paragraphs 1, 2 and 3 of plaintiff's complaint.

II.

Denies that it has any knowledge or information sufficient to form a belief as to the allegations of paragraph 4 of plaintiff's complaint and therefore denies the same.

III.

Denies that it has any knowledge or information sufficient to form a belief as to the allegations of paragraph 5 of plaintiff's complaint, and therefore denies the same.

IV.

Admits that this answering defendant, and the

said defendant Coast Bridge Company made, executed and delivered to the said plaintiff their obligation in writing in the penal sum of thirty thousand dollars, and admits that Exhibit "B" of plaintiff's complaint, mentioned and referred to in paragraph 6 of said [51] complaint is a copy of said obligation so executed by this answering defendant and said defendant Coast Bridge Company. But this answering defendant denies each and every other allegation contained in said paragraph 6 of plaintiff's complaint.

V.

Denies that this answering defendant has any knowledge or information sufficient to form a belief *as the* allegations of paragraph 7 of plaintiff's complaint.

VI.

Denies that this answering defendant has any knowledge or information sufficient to form a belief as to the allegations of paragraph 8 of plaintiff's complaint.

VII.

Denies each and every allegation and all of the allegations of said complaint not herein specifically admitted or denied.

WHEREFORE, having fully answered said plaintiff's complaint this answering defendant prays judgment that the said action be dismissed as to this answering defendant and that it recover its costs in this behalf expended and incurred.

GUNN, RASCH & HALL,

Attorneys for Defendant National Surety Company.

State of Montana,
County of Lewis & Clark,—ss.

Carl Rasch, being first duly sworn, deposes and says: That he is one of the attorneys of said defendant National Surety Company; that he has read the foregoing answer of said defendant National Surety Company to plaintiff's complaint and knows the contents thereof and that the same is true to the best of affiant's knowledge, information and belief; that the reason why this verification is made by affiant, as one of the attorneys for said defendant National Surety Company, is because said defendant National Surety Company has no officer within the county of Lewis and Clark, State of Montana, wherein its said attorney resides.

CARL RASCH.

Subscribed and sworn to before me this 27th day of January, 1915.

[Notarial Seal] E. M. HALL,
Notary Public for the State of Montana, Residing at
Helena, Montana.

My commission expires July 27, 1916.

Service of the within Answer admitted and receipt of copy thereof acknowledged this —— day of January, A. D. 1915.

D. M. KELLY,
Attorney for Plaintiff.

Filed Jan. 27, 1915. Geo. W. Sproule, Clerk.

[53] *In the District Court of the United States,
in and for the District of Montana.*

LINCOLN COUNTY, MONTANA,

Plaintiff,

vs.

THE NATIONAL SURETY COMPANY, a Corpo-
ration,

Defendant.

Judgment.

This cause came on regularly for trial on the 27th day of January, 1916, upon the issues made by the pleadings filed herein by the respective parties, plaintiff and defendant, Sidney M. Logan, James M. Blackford and W. H. Poorman, appearing as counsel for the plaintiff, and Clarence Gilbert and Messrs. Gunn, Rasch and Hall appearing as counsel for the defendants.

A trial by jury having been waived by the parties, the cause was tried before the Court without a jury, whereupon witnesses on the part of the plaintiff and defendant were duly sworn and examined, and documentary evidence introduced by the respective parties, and the evidence being closed, the cause after argument by counsel, was submitted to the Court for consideration and decision; and after deliberation thereon the Court files its finding and decision in writing, and orders that judgment be entered herein in favor of plaintiff in accordance therewith.

WHEREFORE, by reason of the law, and the decision and findings aforesaid, it is ordered, adjudged and decreed that Lincoln County, Montana, the plaintiff herein, do have and recover of and from National Surety Company, a corporation, the defendant herein, the sum of Twenty-nine Thousand Three Hundred Forty-five 40/100 Dollars, with interest thereon at the rate of eight per cent per annum, from ———, together with plaintiff's costs and disbursements incurred in this action, amounting to the sum of Eight Hundred and Forty-nine Dollars.

[54] Judgment rendered and entered this 11th day of April, 1916.

[Seal]

GEO. W. SPROULE,
Clerk.

Attest a true copy.

GEO. W. SPROULE,
Clerk.

United States of America,
District of Montana,—ss.

I, Geo. W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

Witness my hand and the seal of said Court at Missoula, Montana, this 11th day of April, A. D. 1916.

[Seal]

GEO. W. SPROULE,
Clerk.

[Endorsed]: Title of Court and Cause. Judgment-roll. Filed April 11th, 1916. Geo. W. Sproule, Clerk.

